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In the Supreme Court of the United States

October Term, 1981

WILLIAM ARCHIE WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER ON THE MERITS

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We wish to bring to the attention of the Court the recent decision of *United States v. Kevin Krown, Maurice Benjamin, James Feeney, Henry Rosten, Roger Rosen and Anthony Costanzo,* Docket Nos. 81-1192, 1195, 1196, 1197, 1203, 1204, 1254 (2nd Cir. April 1, 1982) which addresses the applicability of 18 U.S.C. §1014 to the deposit of certified checks drawn on a fictitious offshore bank. The Second Circuit in *Krown* reversed the convictions under 18 U.S.C. §1014. *Id.*, pp. 1, 9.[1]

1. As of the date of the printing of this supplemental brief, *United States v. Krown, et al.* has not yet appeared in the slip opinions. Therefore, citations are to the page of the typed opinion which was filed with the Clerk of the Second Circuit Court of Appeals on April 1, 1982.

In *Krown*, the defendants apparently obtained large amounts of money from a number of individuals "by the use of fraudulent financial instruments held out as being issued by" certain fictitious banks. *Krown*, p. 2. While the facts of *Krown* are different and more egregious than the facts in the case before this Court,[2] *Krown* is supportive of petitioner's position in at least two respects.

First, the Second Circuit in *Krown* addressed the question whether §1014 applies to the deposit of bad checks and concluded that §1014 is limited in scope to credit transactions. *Krown*, p. 7. (Pet. Br. 14-24; Pet. R. Br. 4-6).[3]

> "The Third Circuit cases express concern about the possibility that an expansive reading of §1014 will make that statute a general criminal remedy against the passing of worthless checks, contrary to Congressional intent.
>
> We agree that §1014 is not designed to have general application to the passing of worthless checks, and that the language of the statute, limiting it to specified credit transactions, must be given effect. The Second Circuit has warned against construing §1014 in such a manner as to transform what would normally be state criminal offenses into federal crimes. *United States v. Sabatino*, 485 F.2d 540, 543 (2nd Cir. 1973), *cert. den.*, 415 U.S. 948 (1974)." *Krown*, p. 7.

Consistent with petitioner's argument that the mere deposit of a check, as alleged in Counts II and III, does

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2. In *Krown*, the checks at issue were certified and were drawn on a bank which did not exist. Therefore, the purported certification of the check itself was false.

3. The court stated that it was unnecessary for it to "choose between the Fifth Circuit and Third Circuit views regarding the applicability of §1014 to check kiting schemes . . . ." *Krown*, pp. 7-8.

not rise to the level of a credit transaction or a loan (Pet. R. Br. 4-6), the Second Circuit also concluded:

> "The mere intent to have the bank accept the certified checks for deposit and carry out collection procedures is not sufficient to violate the statute." *Krown*, p. 8.

In reaching this conclusion, the Second Circuit distinguished *United States v. Stoddart*, 574 F.2d 1050 (10th Cir. 1978) by pointing out that *Stoddart* "involved an agreement by a bank to permit a withdrawal from an account following a fraudulent representation to the bank by the depositor." *Krown*, p. 9. The defendant in *Stoddart* was attempting to convince the bank to give him credit on a check which he falsely represented orally to have been deposited in another branch of the bank. (See Pet. R. Br. 5-6).

Second, consistent with petitioner's argument, distinguishing the representation made by a *certified* check,[4] the Court in *Krown* also concluded that "a fraudulent *certified* check can be a false statement within the meaning of § 1014." *Krown*, p. 6. (Emphasis added). In reaching this conclusion, the Court emphasized that "a [certified] check constitutes a representation that the check has been accepted by the drawee bank and will be paid upon presentation." *Id.* See *supra* note 4, at 3. As previously argued by the petitioner, the representations embodied by an ordinary check are not the same as those embodied by a certified check. *Id.* (Pet. R. Br. 6-8). In the case before this Court, the two checks at issue were *not* certified, the banks upon which said checks were drawn were in existence and, significantly, the checks were paid by the petitioner in accordance with the representations made by the checks. *Id.* (J.A. 16-17, 21, 35; Tr. 35-36).

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4. See La. Rev. Stat. Ann. §10:3-413(2) (1975); §10:3-104(2)(c); §10:3-411(1) (1975). (Pet. R. Br. 6-8).

On behalf of the petitioner, we again submit that Counts II and III of the indictment should be dismissed with prejudice, and that Count I should be reversed for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nickolas P. Chilivis, do hereby certify that I have this day served the within and foregoing Supplemental Brief for the Petitioner on the merits by hand-delivering three copies thereof to:

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This 12th day of April, 1982.

NICKOLAS P. CHILIVIS